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April 18, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Buellflat Rock Company Inc. 1214 Mission Drive Solvang, CA 93463	William J. Petersen Registered Agent for Buellflat Rock Company Inc. 3064 Glengary Road Santa Ynez, CA 93460
James Hancock Buellflat Rock Company Inc. 1214 Mission Drive Solvang, CA 93463	

Re: Notice of Clean Water Act Violations and Intent to File Suit

Dear Sirs:

I am writing on behalf of Ecological Rights Foundation ("ERF") to give notice that ERF intends to file a civil action against Buellflat Rock Inc., William J. Petersen, and James Hancock (hereinafter collectively "You," "Your" or "Buellflat") for Your violations of the Clean Water Act ("CWA") at the Buellflat Rock Inc. Facility located in Solvang, California ("the Buellflat Facility" or "the Facility").

On information and belief, Buellflat Rock Inc. is a privately-held company with its only location at 1214 Mission Drive, Solvang, California. This notice concerns Your violations of the CWA at Your Facility. Specifically, this letter addresses Buellflat's unlawful discharge of pollutants from its industrial facility located at 1214 Mission Drive, Solvang, California into the Santa Ynez River; and the ongoing and continuous violations of the substantive and procedural requirements of National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater Permit"). This letter further addresses Your violations of the predecessor version of the Industrial Stormwater Permit Issued by the California State Water Resources Control Board ("State Board") by Water Quality Order No. 91-013-DWQ (as amended by Order No. 92-116) in 1991/1992 and Your foreseeable violations of the version of Industrial Stormwater Permit issued on April 1, 2014 by State Board

Water Quality Order No. 2014-0057-DWQ. All three of these versions of NPDES Permit No. CAS000001 had/have essentially the same terms and conditions. All references in this letter to sections of the version of NPDES Permit No. CAS000001 adopted by Water Quality Order No. 97-03-DWQ should be construed as equally referring to comparable sections in the State Board's orders adopting the 1992 and 2014 versions of this permit.[1]

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of his or her intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the CWA, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred and which are continuing to occur at the Buellflat Facility. ERF's investigations have uncovered significant violations of the Industrial Stormwater Permit and the CWA at the Facility. Consequently, You are hereby placed on formal notice from ERF that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, ERF intends to file suit in federal court against You under CWA section 505(a), 33 U.S.C. §1365(a), for CWA violations. These violations of the Industrial Stormwater Permit and the CWA are described more fully below.

I. BACKGROUND

ERF is a non-profit public benefit corporation organized under the laws of California, with its main office in Garberville, California. ERF's purpose is to educate the public about environmental practices which cause harm to human health, the environment and other natural resources, and to seek redress from those harms through litigation or alternative dispute resolution. ERF represents citizens in protecting California's waterways from pollution, securing the multitude of benefits that flow from clean, vibrant waters: safe drinking water, abundant and diverse wildlife populations, healthy recreational opportunities, and economic prosperity from commercial fishing, tourism, and other commercial activities that depend on clean water. To further its goals, ERF actively seeks federal and state agency implementation of state and federal

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[1] The version of NPDES Permit No. CAS000001 adopted by Water Quality Order No. 2014-0057-DWQ becomes effective July 1, 2015 and supersedes the version of this permit adopted by Water Quality Order No. 97-03-DWQ "except for Order 97-03-DWQ's requirement to submit annual reports by July 1, 2015 and except for enforcement purposes." Water Quality Order No. 2014-0057-DWQ at 1 & § I.6 (Findings). Thus, all requirements imposed by Water Quality Order No. 97-03-DWQ will remain in full force and effect after July 1, 2015 for purposes of the citizen suit that ERF proposes to bring against You. However, the requirements imposed by Water Quality Order No. 2014-0057-DWQ will also come into effect after July 1, 2015 and Your future violations of such Order's imposition of NPDES permit terms essentially identical to those ordered by Water Quality Order No. 97-03-DWQ will also be enforceable in ERF's proposed citizen suit.

water quality laws, including the CWA, and as necessary, directly initiates enforcement actions on behalf of itself and its members. ERF's members use and enjoy the waters and species impacted by Your Facility for various recreational, educational, aesthetic and spiritual purposes. These waters include Elkhorn Slough, Moss Landing Harbor, Monterey Bay, and these species include those that reside, breed, and forage in and around those waters.

Discharges of storm water and non-storm water from bulk aggregate processing and facilities are of significant concern because the industrial activities associated with these sites make various pollutants particularly accessible to storm water. Specifically, facilities engaged in bulk aggregate storage, processing, and transport facilities tend to store industrial materials in large piles open to wind and storm water flows. Bulk aggregate facilities generate large amounts of dust and particulate matter which settle on the ground and other surfaces which are exposed to storm water and non-storm water flows. In addition to their storm water runoff, facilities engaged in sand washing also discharge a combination of bay and fresh water seeped from stockpiles that may be contaminated with suspended sediments, chlorine, zinc, copper, lead, and iron, among other pollutants.

You operate a bulk aggregate storage, offloading, and sales facility at 1214 Mission Drive, Solvang, California, which is adjacent to the Santa Ynez River. This Facility discharges storm water directly into the Santa Ynez River along the south-west perimeter. There are no berms or other management practices that prevent the flow of contaminated storm water from the Facility into the Santa Ynez River. In addition, the large number of trucks entering and leaving the Facility from the driveways on Mission Drive track sand and other aggregate pollutants off-site where rainfall washes these pollutants into storm drains that discharge into waters of the United States.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this notice letter have occurred and continue to occur at Your Facility located at 1214 Mission Drive, Solvang, California. Buellflat's Notice of Intent to be covered by the Industrial Stormwater Permit ("NOI") for the Facility identifies the Santa Ynez River as the receiving water for its stormwater discharges. The Santa Ynez River is a water of the United States. Violations of the substantive and procedural requirements of the Industrial Stormwater Permit and the CWA have occurred and continue to occur at the Facility.

A. Buellflat's Facility

You own and operate the Buellflat Rock Inc. Facility, which is located at 1214 Mission Drive in Solvang, California that provides sand and gravel to other construction facilities.

Buellflat's annual reports filed with the California Regional Water Quality Control Board, Central Coast Region ("Regional Board") indicate that discharges of stormwater from the

Facility are consistently contaminated with higher levels of pollutants than permissible under the Industrial Stormwater Permit and that You have therefore failed to develop and/or implement an adequate Stormwater Pollution Prevention Plan ("SWPPP"), Monitoring and Reporting Program ("MRP"), or best management practices ("BMPs") as required by the Industrial Stormwater Permit.

C. Affected Waters

Stormwater discharged from Your Facility flows into the Santa Ynez River. The California Regional Water Quality Control Board, Region 3's Central Coastal Basin Plan ("Basin Plan") seeks to protect and maintain aquatic ecosystems and the resources those systems provide to society. The Basin Plan indicates that the Santa Ynez river supports a variety of beneficial uses including fish habitat, rare and endangered species habitat, contact recreation, and serves as a source of drinking water for municipalities and agriculture. The Basin Plan also acknowledges discharges of urban industrial site stormwater are a potential significant source of pollution adversely affecting the quality of local waters. Contaminated stormwater discharges from Your Facility adversely impact the water quality of the Santa Ynez River and threaten its vulnerable and important ecosystem.

It is unlawful to discharge pollutants to waters of the United States, such as the Santa Ynez River, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. On March 30, 1992 You submitted a Notice of Intent to be authorized to discharge stormwater from Your Facility by the Industrial Stormwater Permit and thus at all relevant times have been a permittee subject to the Industrial Stormwater Permit's requirements. The Stormwater Industrial Permit is an NPDES permit, the current version of which the State Board issued on April 17, 1997.[2] Other than coverage under the Industrial Stormwater Permit, Your Facility lacks NPDES permit authorization for any wastewater discharges.

As discussed below, ERF's investigations have uncovered numerous significant violations of the Industrial Stormwater Permit and of the CWA's prohibition on the discharge of pollutants to waters of the United States not in compliance with an NPDES permit. Consequently, You are hereby placed on formal notice from ERF that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, ERF intends to file suit in federal court against You under CWA section 505(a), 33 U.S.C. § 1365(a), for violations of the CWA.

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[2] On March 30, 1992, You submitted an NOI to be authorized by the predecessor general stormwater permit also issued by the State Board, containing essentially identical limitations as the current Industrial Stormwater Permit. As noted, all CWA violations referred to in this letter prior to the effective date of the current Industrial Stormwater Permit in 1997 are violations of the similar prior version of the Industrial Stormwater Permit then in effect.

III. THE ACTIVITIES AT THE FACILITY ALLEGED TO CONSTITUTE VIOLATIONS AND THE EFFLUENT LIMITATIONS VIOLATED

Numerous pollutant-generating activities at Your Facility occur outdoors in uncovered areas exposed to rainfall and stormwater runoff. As a result, contaminated stormwater runs off the Facility from the discharge points identified in Your Annual Reports to the State Board and discharges to the Santa Ynez River.[3] Pursuant to the Industrial Stormwater Permit, this contaminated stormwater discharge obligates Buellflat to develop, implement, and update and revise a SWPPP which minimizes the discharge of pollutants to a level commensurate with application of the Best Available Technology Economically Achievable (BAT) and the Best Conventional Pollutant Control Technology (BCT). In addition, the SWPPP and Your implementation of the SWPPP must prevent Your discharges from causing or contributing to violations of Water Quality Standards for the Santa Ynez River. You must also monitor and sample Your Facility's stormwater discharges, and meet various other limitations on its stormwater discharge.

As further described below, You have failed to develop, implement, and revise an adequate SWPPP. You have discharged stormwater polluted to levels exceeding BAT and BCT levels of control and which have caused violations of Water Quality Standards. You further have failed to adequately monitor and sample Your stormwater discharges and meet various other limitations on Your stormwater discharge in the Industrial Stormwater Permit. These actions all constitute actionable CWA violations.

As a result of the numerous pollutant-generating activities at Your Facility, contaminated stormwater runs off Your Facility and discharges into the Santa Ynez River. Information available to ERF indicates that You have failed to comply with all requirements of the Industrial Stormwater Permit. As further described below, these actions constitute violations of the CWA.

A. Discharges in Violation of the Industrial Stormwater Permit

The CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Facility discharges stormwater associated with industrial activity to the Santa Ynez River which is contaminated with pollutants. The Facility discharges stormwater pursuant to the Industrial Stormwater Permit, which authorizes these discharges conditioned on the Facility complying with the terms of the Industrial Stormwater Permit. Each of these permit terms constitutes an "effluent limitation" within the meaning of CWA section 505(f),

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3 Your Annual Report for 2009-2010 identifies two discharge locations, but indicated that You were working on eliminating outfall 2. The Annual Reports for 2010-2011, 2012-2013, and 2013-2014 all indicate one single discharge location at Your Facility.

33 U.S.C. § 1365(f). The Facility's stormwater discharges have violated numerous of these permit terms, thereby violating CWA effluent limitations.

1. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit, § B.3, prohibit Your Facility from discharging pollutants above the level commensurate with the application of BAT and BCT. EPA and the State Board have published Benchmark Values set at the maximum level of pollutant loading generally expected if an industrial facility is employing BAT and BCT,[4] (which are set forth in Attachment 1 to this Notice Letter). As reflected in Attachment 1, the Facility has repeatedly discharged stormwater containing pollutant levels exceeding Benchmark Values, which establishes that the Facility has discharged pollutants above a level commensurate with application of BAT and BCT.[5] Attachment 1 compiles some of the self-monitoring data reported by the Facility to the Regional Board reflecting the Facility's sampling of actual stormwater discharges, as well as samples taken by ERF on April 7, 2015 from Your Facility. The sample results reflected in Attachment 1 are representative of the pollutant levels in the Facility's discharge of stormwater, including such discharges that You did not sample or analyze. Thus, every instance when the Facility has discharged stormwater, including instances when the Facility has discharged stormwater that it has not sampled, this stormwater discharge has contained levels of pollutants comparable to the levels set forth in Attachment 1.

In addition, we believe that Your Facility has failed to employ measures that constitute BAT and BCT for bulk aggregate storage and processing facilities, such as moving certain polluting generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, routing storm sewer discharges to publicly owned treatment works (following treatment necessary to meet pretreatment standards), using regenerative sweepers and periodically power washing the Facilities to reduce the build-up of pollutants on-site, washing tires or employing other measures to prevent off-site tracking of pollutants, and other like measures for reducing storm water pollutant discharges to the limits of available, economically achievable, technology.

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[4] These Benchmark Values can be found at http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/docs/sbpermit/forms/benchmark_usepa_multisector.pdf and http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/docs/sbpermit/forms/benchmark_regionalboard.pdf.

5 This provision of the Industrial Stormwater Permit remains the same in the version effective as of July 1, 2015 ("2015 Permit"). *See* 2015 Permit § V.A. ERF hereby places you on notice that ERF intends to bring claims against you for violations of this provision in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future.

ERF alleges and puts You on notice that each day that You discharged stormwater from the Facility, Your stormwater contained levels of pollutants similar to the levels reported in Attachment 1, thus exceeding Benchmark Values.

While You should be aware of each day that You have discharged stormwater from the Facility (as the Industrial Stormwater Permit requires You to monitor such discharges), ERF alleges and puts You on notice that since You began industrial operations at the Facility, You have discharged stormwater containing pollutants from the Facility to the Santa Ynez River during at least every significant local rain event over 0.1 inches. Significant local rain events are reflected in the rain gauge data available at http://cdec.water.ca.gov and http://lwf.ncdc.noaa.gov/oa/ncdc.html. Attached as Attachment 2 is a table reflecting the rainfall data for the past five years, as reported to the Cachuma Lake Station, the closest monitoring station available on the NOAA website.

ERF further alleges that on each day that You have discharged stormwater You have discharged stormwater that was not treated to a level commensurate with BAT or BCT in violation of the Effluent Limitations of the Industrial Stormwater Permit, § B.3., because, as further alleged in subsection 3, below, You have not developed and implemented a SWPPP that mandates BMPs that are commensurate with BAT and BCT for Your Facility.

ERF alleges that Your unlawful discharges of stormwater from the Facility with levels of pollutants exceeding BAT and BCT levels of control continue to occur presently during all significant rain events. Each discharge of stormwater from Your Facility after the effective date of the BAT and BCT requirements has constituted a separate violation of the Industrial Stormwater Permit and the CWA. You are subject to civil penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

Your continued discharges of stormwater containing levels of pollutants above Benchmark Values and BAT- and BCT-based levels of control necessarily means that You have not developed and/or implemented sufficient BMPs[6] at the Facility to prevent stormwater flows from coming into contact with the sources of contaminants at the Facility or otherwise to control the discharge of pollutants from the Facility. Accordingly, Buellflat has not developed and/or implemented adequate SWPPPs or MRPs at the Facility.

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[6] The July 1, 2015 version of the permit requires dischargers to implement a set of minimum BMPs. Implementation of the minimum BMPs, in combination with any advanced BMPs necessary to reduce or prevent pollutants in industrial stormwater discharges, serve as the basis for compliance with the permit's technology-based effluent limitations and water quality based receiving water limitations. *See* 2015 Permit § X.H.1 and 2.. ERF hereby places you on notice that ERF intends to bring claims against you for violations of this provision in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future.

2. Discharges that Have Impaired Receiving Waters

The Discharge Prohibitions of the Industrial Stormwater Permit, ¶ A.2, prohibit stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. The Discharge Prohibitions of the Industrial Stormwater Permit, ¶ A.2, prohibit stormwater discharges to surface or groundwater that adversely impact human health or the environment. The Receiving Water Limitations of the Industrial Stormwater Permit, ¶ C.2, prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards.[7] Applicable Water Quality Standards are set forth in the Basin Plan[8] and the California Toxics Rule[9] ("CTR").

The Basin Plan, *inter alia*, establishes the following Water Quality Standards for the Santa Ynez River:

> 1. Controllable water quality shall conform to the water quality objectives contained therein. Basin Plan at III-2.
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> 2. Dissolved oxygen levels shall be a minimum of 5.0 mg/L [5,000 ug/L]. *Id.* at III-4
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> 3. Suspended sediment shall not be discharged at rates that cause nuisance or adversely affect beneficial uses. *Id.* at III-3.

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[7] The July 1, 2015 version of this permit contains essentially identical Discharge Prohibitions. *See* 2015 Permit § V. A-C. ERF hereby places you on notice that ERF intends to bring claims against you for violations of these provisions in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future. In addition, the 2015 Permit requires a discharger to monitor additional parameters if the discharge(s) from its facility contributes pollutants to receiving waters that are listed as impaired for those pollutants (CWA section 303(d) listings). *See* 2015 Permit § VI. A-C and VII.B. The receiving waters that are 303(d) listed as impaired for pollutants that are likely to be associated with industrial stormwater in Appendix 3. The Santa Ynez River is among the listed waters impaired for sodium, water temperature and total dissolved solids. ERF hereby places you on notice that ERF intends to bring claims against you for violations of this provision in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices, including monitoring practices, in the future. These practices do not include the enhanced monitoring that will be required by the 2015 Permit.

[8] The Basin Plan is published by EPA on the internet at:
http://www.epa.gov/waterscience/standards/wqslibrary/ca/ca_9_san_francisco.pdf
The Basin Plan is also published by the Regional Board on the internet at:
http://www.swrcb.ca.gov/rwqcb2/basinplan.htm

[9] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31682

4. Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses. *Id.*

5. Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. *Id.*

6. Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. *Id.*

ERF alleges and puts You on notice that Your discharges of stormwater from the Facility have caused or contributed to an exceedance of one or more of the above-listed Water Quality Standards. Attachment 1 to this Notice Letter compiles some of the self-monitoring data reported by the Facility to the Regional Board reflecting the Facility's sampling of stormwater discharges as well as ERF's April 7, 2015 sample results from the culvert at the south end of the property that discharges directly into the Santa Ynez River. The sample results reflected in Attachment 1 are representative of the pollutant levels in the Facility's discharge of stormwater, including such discharges that You did not sample or analyze. Thus, every instance when the Facility has discharged stormwater, including instances when the Facility has discharged stormwater that You have not sampled, this stormwater discharge has contained levels of pollutants comparable to the levels set forth in Attachment 1.

Attachment 1indicates that the Facility routinely discharges stormwater to the Santa Ynez River containing, *inter alia*, the following pollutants: nitrate and nitrites, high total suspended solids (TSS), high Specific Conductance (EC or SC), high metals, including copper, chromium, lead, mercury, nickel, and zinc. The levels of these pollutants in Your Facility's stormwater discharges have caused pollution, contamination, or nuisance in violation of the Discharge Prohibitions of the Industrial Stormwater Permit, ¶ A.2 and adversely impacted the environment in violation of the Receiving Water Limitations of the Industrial Stormwater Permit, ¶ C.1. Moreover, the discharge of these pollutants has caused the Santa Ynez River not to attain or contributed to these waters not attaining one or more applicable Water Quality Standards in violation of the Receiving Water Limitations of the Industrial Stormwater Permit, ¶ C.1.[10]

[10] The July 1, 2015 version of this permit contains Receiving Water Limitations. *See* 2015 Permit § VI.A-C and VII.B. ERF hereby places you on notice that ERF intends to bring claims against you for violations of these provisions in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future.

Specifically, Your Facility's discharge of excessive TSS has caused or contributed to the Santa Ynez River not meeting applicable Water Quality Standards in the Basin Plan for levels of suspended sediment and turbidity. Your Facility's discharge of stormwater containing suspended and settleable toxic metals and other materials has contributed to the deposition and/or dispersal of materials that interfere with beneficial uses of the Santa Ynez River and a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life due to bioaccumulation. Your Facility's discharge of nitrates and nitrites have caused the Santa Ynez River to exceed Water Quality Criteria established by the Basin Plan for these pollutants.

ERF alleges and puts You on notice that each day that You discharged stormwater from the Facility, Your stormwater contained levels of pollutants matching the levels set forth in Attachment 1 and thus caused levels of pollutants to exceed one or more of the applicable Water Quality Standards in the Santa Ynez River.[11] While You should be aware of each day that You have discharged stormwater from the Facility (as the Industrial Stormwater Permit requires You to monitor such discharges), ERF alleges and puts You on notice that since the effective date of the above-referenced Water Quality Standards, which date back at least to 1986 in most instances and to May 24, 2000 for the California Toxics Rule. You have discharged stormwater from the Facility during at least every significant local rain event over 0.1 inches that have caused or contributed to Water Quality Standards not being met in the Santa Ynez River. Significant local rain events are reflected in the rain gauge data available at http://cdec.water.ca.gov and http://lwf.ncdc.noaa.gov/oa/ncdc.html, and, as mentioned above, summarized in Attachment 2.

Your unlawful discharges from the Facility continue to occur presently during all significant rain events. Each discharge from Your Facility that causes or contributes to an exceedance of an applicable Water Quality Standard constitutes a separate violation of the Industrial Stormwater Permit and the CWA. You are subject to penalties for violations of

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[11] The version of permit effective July 1, 2015 contains two types of Numerical Action Level (NAL) exceedances: (1) an annual NAL and (2) an instantaneous maximum NAL. An annual NAL exceedance occurs when the average of all sampling results within a reporting year for a single parameter (except pH) exceeds the applicable annual NAL. An instantaneous maximum NAL exceedance occurs when two or more analytical results from samples taken for any parameter within a reporting year exceed the applicable instantaneous maximum NAL value. Instantaneous maximum NALs are only for Total Suspended Solids (TSS) and Oil and Grease (O&G). The 2015 Permit requires dischargers to develop and implement Exceedance Response Actions (ERAs), when an annual NAL or instantaneous maximum NAL exceedance occurs during a reporting year. *See* 2015 Permit § XI and XII. ERF hereby places you on notice that ERF intends to bring claims against you for violations of this provision in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices (which include discharges at levels above the NAL) and fail to adopt compliant ERAs.

the Industrial Stormwater Permit and the CWA within the past five (5) years.

3. Violation of Industrial Stormwater Permit Conditions Related to Development and/or Implementation of an Adequate Stormwater Pollution Prevention Plan ("SWPPP")

The Industrial Stormwater Permit, Section A: Stormwater Pollution Prevention Plan Requirements, ¶ 1 requires dischargers covered by the Industrial Stormwater Permit and commencing industrial activities before October 1, 1992 to develop and implement an adequate SWPPP by October 1, 1992. The Provisions of the Industrial Stormwater Permit, ¶ C.1 also requires dischargers to make all necessary revisions to existing SWPPPs promptly, and in any case no later than August 1, 1997.[12]

The SWPPP must include, among other requirements, the following:

1. Specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, including BMPs already existing and BMPs to be adopted or implemented in the future. Industrial Stormwater Permit at 17, Section A: Stormwater Pollution Plan Requirements, ¶ 8.

2. A site map showing the stormwater conveyance system and areas of actual and potential pollutant contact and all areas of on-going industrial activity. *Id.* at 12-13, Section A: SWPPP Requirements, ¶ 4.

3. Identification of the specific individual or individuals and their positions within the facilities organization as members of a stormwater pollution prevention team responsible for developing the SWPPP, assisting the facilities manager in SWPPP implementation and revision, and conducting all monitoring program activities required in the Industrial Stormwater Permit. The SWPPP must clearly identify the Industrial Stormwater Permit related responsibilities, duties, and activities of each team member. *Id.* at 12, Section A: SWPPP Requirements, ¶ 3.a.

4. A list of significant materials handled and stored at the site and a narrative

[12] The July 1, 2015 version of this permit contains essentially identical SWPP requirements, but with a new set of minimum BMPs and additional Advanced BMPs. *See* 2015 Permit § X.A-I. ERF hereby places you on notice that ERF intends to bring claims against you for violations of these provisions in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future as Your present practices do not include BMPs commensurate with the 2015 Permit's requirements for minimum and advanced BMPs, *i.e.*, for BMPs that will address Your exceedances of NALs, prevent exceedances of water quality standards, and be commensurate with BAT/BCT.

assessment of "which pollutants are likely to be present in stormwater discharges" from the site. *Id.* at 14, 17; Section A, ¶ 5 and Section A, ¶ 7.a.ii.

5. Revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *Id.* at 23, Section A: SWPPP Requirements, ¶ 10.d.

You have failed to prepare, maintain, revise and implement Your SWPPP as required, as evidenced by stormwater discharges that exceed EPA and State benchmarks and contribute to violations of Water Quality Standards in receiving waters. Your SWPPP does not specify adequate BMPs designed to reduce pollutant discharge to BAT and BCT levels in accord with Section A: SWPPP Requirements, ¶ 8 of the Industrial Stormwater Permit as evidenced by the Facility's continued discharge of stormwater contaminated above pollutant levels attainable via application of BAT and BCT. For example all of the following BMP measures are technologically feasible, constitute BAT and BCT for Your Facility, and would greatly decrease Your discharges of contaminated stormwater:

1. Install dikes, curbs, and berms to divert or prevent stormwater from discharging.
2. Help reduce the sediment and pollutant load of stormwater discharged by installing gabions, riprap, native rock retaining walls, straw bale barriers, sediment traps/catch basins, biotechnical stabilization, silt fences, siltation berms, brush sediment barriers and vegetated buffer strips for sediment control and collection.
3. Conduct vehicle and equipment maintenance in covered areas

You have failed to implement such BMPs.

Your failures to draft an adequate SWPPP, and/or to revise, and/or to implement Your SWPPP in all the above respects are in violation of the requirements of Section A of the Industrial Stormwater Permit. You were required to have prepared and implemented an adequate SWPPP by no later than October 1, 1992 pursuant to the previous Industrial Stormwater Permit issued by the State Board and by Section A: Stormwater Pollution Prevention Plan Requirements, ¶ 1 of the current Industrial Stormwater Permit. Therefore, You have been in daily and continuous violation of the requirement to develop and implement an adequate SWPPP for the Facility on each and every day since October 1, 1992 that You have maintained the Facility. You will continue to be in violation every day that You fail to develop and implement an adequate SWPPP. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

4. Failure to Develop and/or Implement an Adequate Monitoring and Reporting Program and Perform Annual Comprehensive Site Compliance Evaluations as Required by the Industrial Stormwater Permit.

The Industrial Stormwater Permit, Section B: Monitoring and Reporting Program (MRP) Requirements, ¶ 1, and Provisions, ¶ E.3, require dischargers to develop and implement an adequate written MRP by October 1, 1992 or when their industrial activities begin. The MRP must be sufficient to: (a) ensure that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit, (b) ensure practices at the facilities to reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges are evaluated and revised to meet changing conditions, (c) aid in the implementation and revision of the SWPPP as required by the Industrial Stormwater Permit, and (d) measure the effectiveness of BMPs to prevent or reduce pollutants in stormwater discharges and authorized non-stormwater discharges. Section B: MRP Requirements, ¶ 2. All dischargers must fully implement their MRP. Section B: MRP Requirements, ¶ 1. All dischargers must submit a certified Annual Report documenting monitoring activity. Section B: MRP Requirements, ¶ 14. In addition, Section C: Standard Provisions, ¶¶ 9 and 10, of the Industrial Stormwater Permit require dischargers to certify, based on annual site inspection, that the permitted facilities are in compliance with the Permit and to report any noncompliance with its terms.[13] As described below, however, You have not adopted or have not fully implemented an adequate MRP, have failed to provide complete and accurate Annual Reports, and have failed to provide accurate reporting of noncompliance with the terms of the Industrial Stormwater Permit.

Your MRP must provide for collection of stormwater samples from the first hour of discharge from the first storm event of the wet season and one other storm event, and analysis of such samples. Section B: MRP Requirements ¶ 5. Your MRP must further direct You to take and analyze samples from each discharge point at Your Facility. *Id.* at ¶¶ 5, 7.a. Your Annual Reports submitted to the Regional Board for the Facility indicate that You have not consistently and/or properly taken and analyzed the required samples. For 2012-2013 and 2013-2014, You did not collect or analyze a single stormwater sample at all. This is a violation of the requirement to sample two storm events in a year.

Your MRP must provide for analysis of stormwater samples for TSS, pH, specific

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[13] The July 1, 2015 version of this permit contains updated Monitoring requirements. *See* 2015 Permit § XI. ERF hereby places you on notice that ERF intends to bring claims against you for violations of these provisions in the July 1, 2015 version of the Industrial Stormwater Permit to the extent that You continue Your present stormwater discharge practices in the future as Your present practices do not include monitoring efforts commensurate with the 2015 Permit's requirements.

conductance, and total organic carbon ("TOC") or oil and grease. In addition, Your MRP must provide for analysis of stormwater samples for the other analytical parameters listed in the Industrial Stormwater Permit under Table D. You indicate that Your SIC code is 1442, which would obligate You under Table D to analyze stormwater samples for nitrate and nitrite nitrogen (N + N). Finally, Your MRP must provide for analysis of toxic chemicals and other pollutants that are likely to be present in Your stormwater discharges. Industrial Stormwater Permit, Section B: MRP Requirements, ¶ 5. Sampling conducted by You and by ERF has shown that Your stormwater discharges, in addition to these aforementioned pollutants, contain elevated copper, chromium, lead, mercury, nickel, and zinc. In addition, any party operating in Your industry doing their due diligence would know that stormwater from a Facility such as Yours would have elevated metals. Your MRP is inadequate because it fails to provide for analysis of additional metal pollutants common to the aggregate industry.

You have failed to implement Your MRP and/or an MRP that would be compliant with the Stormwater Industrial Permit because you have not analyzed all of the pollutant parameters listed in the above paragraph in each of the stormwater runoff events from Your Facility that You were required to take samples of. Specifically, in 2010-2011, You failed to analyze Your stormwater discharges for N+N or any metals likely to be present in your discharges.

Based on the above, You have not developed and implemented an adequate MRP. You were required to have prepared and implemented an adequate MRP by no later than October 1, 1992 pursuant to the previous Industrial Stormwater Permit issued by the State Board and by Section B: Monitoring Program and Reporting Requirements, ¶ 1.a. of the current Industrial Stormwater Permit. Therefore, You have been in daily and continuous violation of the monitoring and reporting requirements of the Industrial Stormwater Permit set forth in Section B: MRP Requirements every day since October 1, 1992. You will continue to be in violation every day that You fail to develop and implement an adequate MRP for the Facility. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

As further discussed above, You have not submitted accurate and complete Annual Reports and reports of Your noncompliance with the Industrial Stormwater Permit. Therefore, You have been in daily and continuous violation of the reporting requirements of the Industrial Stormwater Permit, Section B: MRP Requirements, ¶ 14 and Section C: Standard Provisions, ¶¶ 9 and 10 every day since each of Your Annual Reports were due.

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Buellflat Rock Inc., James Hancock, and Robert Petersen are the persons responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

Our name, address, and telephone number is as follows:

Ecological Rights Foundation
867 B Redwood Drive
Garberville, CA 9542
(707) 923-4372

VI. COUNSEL

ERF has retained legal counsel to represent it in this matter. Please direct all communications to:

Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
(415) 533-3376
Email: csproul@enviroadvocates.com

Fredric Evenson
Ecology Law Center
~Monterey Bay~
P.O. Box 1000
Santa Cruz, CA 95061
(831) 454-8216
Email: evenson@ecologylaw.com

VII. REMEDIES

ERF will seek injunctive and declaratory relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), and such other relief as permitted by law. In addition, ERF will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. section 19.4, against each defendant in this action of up to $32,500 for all violations on or after March 15, 2004. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004). Lastly, ERF will seek to recover costs and attorneys' fees in accord with CWA section 505(d), 33 U.S.C. § 1365(d).

ERF believes this Notice of Violations and Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period or thereafter, to file a citizen

suit under CWA section 505(a) against You for the above-referenced violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If You wish to pursue such discussions in the absence of litigation, we suggest that You initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Christopher a. Sproul

Christopher Sproul
Environmental Advocates
Counsel for Ecological Rights Foundation

ADDITIONAL SERVICE LIST – FEDERAL & STATE AGENCIES

cc: Gina McCarthy, Administrator U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460	Eric Holder, U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001
Jared Blumenfeld, Regional Administrator U.S. Environmental Protection Agency Region IX 75 Hawthorne Street San Francisco, California 94105	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, California 95812-0100
Kenneth A. Harris, Executive Officer Regional Water Quality Control Board Region 3 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401	

Buellflat Annual Reports Sampling Data

No sampling results provided for 2013-2014

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
1/23/2012	1	pH	6.8	6 to 9					
1/23/2012	1	SC	1640 uS/cm	200 uS/cm	8.20				
1/23/2012	1	TSS	606 mg/L	100 mg/L	6.06				
1/23/2012	1	TOC	5.9 mg/L	110 mg/L					
1/23/2012	1	N + N	6.8 mg/L	.68 mg/L	10.00				

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
10/5/2011	1	pH	7.6	6 to 9					
10/5/2011	1	SC	2740 uS/cm	200 uS/cm	13.70				
10/5/2011	1	TSS	117 mg/L	100 mg/L	1.17				
10/5/2011	1	TOC	19.2 mg/L	110 mg/L					
10/5/2011	1	N + N	4.5 mg/L	.68 mg/L	6.60				

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
2/16/2011	1	pH	7.9	6 to 9					
2/16/2011	1	SC	1600 uS/cm	200 uS/cm	8.00				
2/16/2011	1	TSS	430 mg/L	100 mg/L	4.30				
2/16/2011	1	TOC	5.3 mg/L	110 mg/L					
2/16/2011	1	N + N	x	.68 mg/L					

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
12/20/2010	1	pH	7.6	6 to 9					
12/20/2010	1	SC	299 uS/cm	200 uS/cm	1.49				
12/20/2010	1	TSS	160 mg/L	100 mg/L	1.60				
12/20/2010	1	TOC	1.1 mg/L	110 mg/L					
12/20/2010	1	N + N	x	.68 mg/L					

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
4/20/2010	1	pH	7.9	6 to 9					
4/20/2010	1	SC	1110 uS/cm	200 uS/cm	5.50				
4/20/2010	1	TSS	1250 mg/L	100 mg/L	12.50				
4/20/2010	1	TOC	4.5 mg/L	110 mg/L					
4/20/2010	1	N + N	2.2 mg/L	.68 mg/L	3.24				

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
4/20/2010	2	pH	8.1	6 to 9					
4/20/2010	2	SC	610 uS/cm	200 uS/cm	3.05				
4/20/2010	2	TSS	312 mg/L	100 mg/L	3.12				
4/20/2010	2	TOC	7.1 mg/L	110 mg/L					
4/20/2010	2	N + N	1.6 mg/L	.68 mg/L	2.35				

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
10/13/2009	1	pH	8	6 to 9					
10/13/2009	1	SC	2100 uS/cm	200 uS/cm	10.50				
10/13/2009	1	TSS	270 mg/L	100 mg/L	2.70				
10/13/2009	1	TOC	4.6 mg/L	110 mg/L					
10/13/2009	1	N + N	7.3 mg/L	.68 mg/L	10.74				

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-X	TIMES EXCEEDED
10/13/2009	2	pH	8.1	6 to 9					
10/13/2009	2	SC	1240 uS/cm	200 uS/cm	6.20				
10/13/2009	2	TSS	236 mg/L	100 mg/L	2.36				
10/13/2009	2	TOC	5.2 mg/L	110 mg/L					
10/13/2009	2	N + N	2.7 mg/L	.68 mg/L	3.97				

ERF SAMPLING RESULTS

DATE	OUTFALL	POLLUTANT	RESULT	EPA BENCHMARK	TIMES EXCEEDED	CTR (Fresh) CMC	TIMES EXCEEDED	BASIN PLAN Table 3-5 Hard mg/L	TIMES EXCEEDED
4/7/2015		pH	8.63	6 to 9				7 to 8.5	1
4/7/2015		SC	1800 uS/cm	200 uS/cm	9.0				
4/7/2015		TSS	9200 mg/L	100 mg/L	92.0				
4/7/2015		BOD	6.8 mg/L	30 mg/L					
4/7/2015		COD	3.6 mg/L	120 mg/L					
4/7/2015		Copper	0.14 mg/L	0.0636 mg/L	2.2	0.013 mg/L	4.9	0.03 mg/L	4.6
4/7/2015		Chromium	0.32 mg/L	0.0159 mg/L				0.05 mg/L	6.4
4/7/2015		Lead	0.035 mg/L	0.0816 mg/L		0.065 mg/L		0.03 mg/L	1.2
4/7/2015		Mercury	0.0014 mg/L	0.0024 mg/L	0.6			0.0002 mg/L	7
4/7/2015		Nickel	0.47 mg/L	1.1.47 mg/L		0.47 mg/L		0.4 mg/L	1.2
4/7/2015		Zinc	0.43 mg/L	0.117 mg/L	3.7	0.12 mg/L	3.6	0.2 mg/L	2.1

Attachment 2: Alleged Dates of Buellflats' Violations, March 2010 to March 2015

Days with precipitations of one tenth of an inch or greater, as reported by NOAA's Climatic Data Center, Cachuma Lake Station. http://lwf.ncdc.noaa.gov/oa/ncdc.html

Date	Precipitation
4-Mar-10	0.16
5-Apr-10	0.19
12-Apr-10	2
13-Apr-10	0.13
21-Apr-10	0.66
6-Oct-10	0.78
19-Oct-10	0.22
20-Oct-10	0.15
25-Oct-10	0.1
30-Oct-10	0.82
8-Nov-10	0.26
20-Nov-10	0.48
21-Nov-10	0.51
6-Dec-10	0.59
17-Dec-10	0.15
18-Dec-10	1
19-Dec-10	1.31
20-Dec-10	1.99
21-Dec-10	0.61
22-Dec-10	1.44
23-Dec-10	0.72
26-Dec-10	0.61
29-Dec-10	0.93
2-Jan-11	0.6
3-Jan-11	0.97
31-Jan-11	0.21
17-Feb-11	0.2
18-Feb-11	0.12
19-Feb-11	1.77
20-Feb-11	0.49
26-Feb-11	0.68
3-Mar-11	0.27
19-Mar-11	0.13
20-Mar-11	7.3
21-Mar-11	3.36

24-Mar-11	0.39
25-Mar-11	0.25
17-May-11	0.1
18-May-11	0.21
5-Jun-11	0.14
6-Jun-11	0.2
5-Oct-11	0.14
6-Oct-11	0.28
6-Nov-11	0.3
12-Nov-11	1.03
20-Nov-11	0.8
21-Nov-11	0.53
12-Dec-11	0.14
13-Dec-11	0.12
21-Jan-12	0.96
23-Jan-12	0.15
24-Jan-12	0.45
8-Feb-12	0.17
17-Mar-12	1.55
18-Mar-12	0.73
25-Mar-12	0.92
26-Mar-12	0.32
1-Apr-12	0.25
11-Apr-12	1.29
12-Apr-12	0.14
13-Apr-12	0.61
14-Apr-12	0.48
26-Apr-12	0.23
27-Apr-12	0.17
7-Sep-12	0.18
17-Nov-12	0.45
18-Nov-12	0.36
29-Nov-12	0.36
30-Nov-12	0.1
2-Dec-12	0.22
3-Dec-12	0.65
13-Dec-12	0.21
18-Dec-12	0.39
23-Dec-12	0.12
24-Dec-12	0.33
26-Dec-12	0.22
29-Dec-12	0.35
30-Dec-12	0.28

6-Jan-13	0.25
7-Jan-13	0.19
11-Jan-13	0.19
24-Jan-13	0.36
25-Jan-13	0.52
26-Jan-13	0.21
8-Feb-13	0.11
9-Feb-13	0.1
20-Feb-13	0.16
8-Mar-13	0.66
1-Apr-13	0.17
29-Oct-13	0.24
21-Nov-13	0.66
29-Nov-13	0.43
8-Dec-13	0.12
3-Feb-14	0.25
7-Feb-14	0.38
27-Feb-14	0.83
28-Feb-14	2.63
1-Mar-14	2.82
2-Mar-14	0.44
30-Mar-14	0.12
1-Apr-14	0.26
2-Apr-14	0.31
1-Nov-14	0.72
2-Nov-14	0.13
2-Dec-14	0.23
3-Dec-14	1.51
12-Dec-14	3.18
13-Dec-14	0.25
16-Dec-14	0.36
17-Dec-14	0.3
11-Jan-15	0.63
27-Jan-15	0.14
8-Feb-15	0.32
9-Feb-15	0.12